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HIGH COURT OF JUDICATURE AT BILASPUR (C.G.)

WRIT PETITION NO. 3008 OF 2003

PETITIONER:

Ashish Soni S/o Shri S.P.Soni,
aged about 24 years, resident of
Geetanjali-Nagar, Karbala Road,
Street No.3, Bilaspur (C.G.)

-Versus-

RESPONDENTS:

1. The State of Chhattisgarh,
Through the Secretary,
Department of Higher Education,
D.K.S. Bhawan, Raipur (C.G.)
2. Guru Ghasidas University,
Bilaspur, Through Registrar,
Guru Ghasidas University,
Bilaspur.

POST FOR ORDER ON 17th DECEMBER, 2003

Sd/-
L.C.BHADOO
Judge

16.12.2003

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Petitioner by Shri Dharendra Mishra, Advocate.

State/Respondent No.1 by Shri Sanjay K. Agarwal, Deputy Advocate General.

Respondent No.2 by Shri Manindra Shrivastava, Advocate.

Before: Hon'ble Shri L.C. Bhadoo, J

ORDER

(Passed on/24. December, 2003)

1. By this writ petition under Article 226/227 of the Constitution of India the petitioner has challenged the decision of the Respondent No.2 whereby the petitioner has not been considered for admission to the M.B.A. Course on the ground that he has not secured 50% aggregate marks in the graduation degree course examination.
2. Brief facts leading to filing of this writ petition are that the petitioner being a B.Com. Graduate of Guru Ghasidas University i.e. Respondent No.2 allowed to appear in Chhattisgarh Pre-M.B.A. Test,

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2003 conducted by the Respondent No.2. He successfully participated in the written examination, he was called for group discussion and personal interview in which the petitioner succeeded and thereafter he was invited for counseling on 1st September 2003 vide Annexure P/4. However he was not considered for admission on the ground that he had secured less than 50% marks in the graduation.

3. The further case of the petitioner is that the rule book published by the Respondent No.2 prominently prescribes that the eligibility conditions as mentioned in Rule 2.3 of Chapter 2 is required to be fulfilled by all the candidates and Rule 2.3.1 of Chapter 2 clearly prescribes the educational qualification for admission to 2 years full time M.B.A. Course as Graduate/Post Graduate of any discipline of any Indian University or Foreign University/Institute. It also prescribes that the Graduation should be of 3 years regular study after passing 12th Class examination of 10+2 Scheme. The petitioner qualifies both the educational criteria prescribed by the Respondent No.2. He had furnished the relevant educational certificates, domicile certificate and caste certificate. However, the Respondent No.2 refused to give admission to the petitioner on non-existent ground which is manifestly illegal and opposed to natural justice and public policy.
4. No return has been filed on behalf of the Respondent No.1 in spite of the opportunity given to the State. However, return has been filed on behalf of the Respondent No.2 in which it has been mentioned that mere empanelment or inclusion of name in the select list does not give the petitioner any indefeasible or vested right for admission in the M.B.A. Course. The empanelment of the petitioner was only for the purpose of preparing a list of candidates according

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to their merit for being forwarded to different institutions including the answering institution. In addition to his empanelment the petitioner is also required to fulfill other minimum eligibility criteria applicable to the particular institution where the seats are lying and according to the minimum educational qualifications prescribed for admission to M.B.A. courses under Ordinance No.44 of Guru Ghasidas University, Bilaspur which has the force of law, minimum qualification for admission to M.B.A. program is "Graduates from all disciplines with degree recognized by Guru Ghasidas University, Bilaspur as equivalent to graduate or post-graduate degree, provided they have secured 50% of marks (45% for SC/ST candidates) or above in aggregate at the first graduate or post-graduate degree examination." Therefore, in order to claim admission a person must possess the necessary qualification.

5. The Government of Chhattisgarh, Department of Higher Education, Technical Education, Science and Technology ordered the Respondent No.2 to act as an agency to conduct Chhattisgarh Pre-M.B.A. and M.C.A. Entrance Test, 2003. On the basis of the instructions so issued, the Respondent No.2 obtained necessary guidelines and instructions from the Government vide letter received on 29.11.2002. The Respondent No.2 also received the rules for admission as prescribed by the Director of Technical Education, Chhattisgarh, Raipur. Relevant excerpts of the rules of admission which were framed by the Respondent No.2 as contained in Chapter-2. The Respondent No.2 was directed to hold entrance test for admission to M.B.A. and M.C.A. course in two private institutions affiliated to the Institute of Management, Pt. Ravi Shankar University, Raipur and the Institute of Management, Guru Ghasidas University, Bilaspur. Relevant rules relating to admission to M.B.A.

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course for Pt. Ravi Shankar University, Raipur is annexed as Annexure R-2/4.

6. I have heard Mr. Dhirendra Mishra, learned counsel for the petitioner, Mr. Manindra Shrivastava, learned counsel for the Respondent No.2/Guru Ghasidas University and Shri Sanjay K. Agarwal, learned Deputy Advocate General for the Respondent No.1/State.
7. Learned counsel for the petitioner submitted that the brochure issued by the Respondent No.2 for C.G. Pre-M.B.A. Test, 2003 and the Rule 2.3.1 of Chapter-2 prescribes the educational qualification and as per this rule a candidate is required to be a Graduate or Postgraduate in any discipline of any Indian University or Foreign University or Institute recognized by the concerned University as equivalent thereto and no minimum percentage of marks at that examination has been prescribed. He further submitted that these Rules were approved by the Director of Technical Education, Govt. of Chhattisgarh. As per paragraph-3 of the return this examination was conducted for two private institutions affiliated to the institute of Management, Pandit Ravi Shankar University, Raipur and the institute of Management Guru Ghashidas University, Bilaspur. Therefore, he submitted that the Respondent No.2 was not within its right to not to consider the case of the petitioner for admission to the M.B.A. course as these rules were framed by the State Govt. and in this rule minimum marks of 50% was not prescribed.
8. Learned counsel for the petitioner further submitted that one M.B.A. course is being conducted by the Pt. Ravi Shankar University, Raipur and one is being conducted in Guru Ghasidas University, Bilaspur and two by other two private institutions affiliated with Pt. Ravi Shankar University, Raipur and as per Ordinance No. 88 of Pt.

Ravi Shankar University (Annexure R-2/4) a O.B.C. candidate having Graduate degree with at least 45% marks is eligible for appearing in M.B.A. Test examination and as per Annexure R-2/3 issued by the Govt. of Chhattisgarh a O.B.C. candidate having Graduate degree with 40% marks is eligible for admission.

9. On the other hand learned Deputy Advocate General argued that if any candidate is not holding a graduate degree with minimum prescribed percentage, he cannot be given admission. For this purpose he relied on the judgment of the Apex Court reported in Judgment Today 2002 (8) SC 84 Professional Examination Board M.P. & another Vs. Prashant Agarwal & another.
10. Learned counsel for the Respondent No.2 submitted that as per Ordinance No. 44 of Guru Ghasidas University, a candidate must possess a graduate degree with at least 50% marks and he further submitted that even if Rule 2.3.1 of the Rules for admission to M.B.A. test examination 2003 does not prescribe minimum percentage of marks, even then in view of the Ordinance No.44 of Guru Ghasidas University, the petitioner is not entitled for admission.
11. It is admitted position that for M.B.A. Course centralize entrance examination is being conducted by Pt. Ravi Shankar University, Raipur and Guru Ghasidas University, Bilaspur in the alternative. It is also admitted position that the Rules for admission are prepared with the approval of the State of Chhattisgarh, Director, Technical Education and this examination was conducted for four M.B.A. colleges i.e. one course is being conducted by Respondent No.2, and 3 colleges are under Pt. Ravi Shankar University. In the first place the rules for eligibility to appear in the M.B.A. course admission for the year 2003 does not prescribe minimum percentage at the level of

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Graduation degree. Rule 2.3.1 simply prescribes that a candidate seeking admission to two years fulltime M.B.A. Course should be a Graduate. In alternative even if we consider the arguments of learned counsel for the Respondent No.2 Shri Manindra Shrivastava the Ordinance No.88 of Pt. Ravi Shankar University lays down that a O.B.C. candidate holding Graduate degree or Postgraduate degree of the University with at least 45% marks is eligible for admission to the M.B.A. course and even Additional Director, Technical Education communicated the Registrar of Respondent No.2 vide its letter dated 29th November, 2002. Along with this letter a document is annexed which shows that a Graduate is eligible for admission to the M.B.A. course. In the 'eligibility conditions' it is mentioned that a O.B.C. candidate who is appearing or has appeared for final year of any degree examination passed bachelor examination with at least 40% marks is eligible for admission.

12. Even in the entrance test conducted for M.B.A. course for the year 2002-2003 by the Pt. Ravishankar University the O.B.C. candidate with 40% Graduation degree were considered for admission to M.B.A. course.
13. It is not disputed that the petitioner is a O.B.C. candidate who possess graduation degree with 48% marks. In view of the above position since the petitioner possess Graduation degree with 48% marks and he is an O.B.C. candidate, therefore he is eligible for admission to the M.B.A. course 2003-2004, therefore he has been wrongly denied the admission as he is entitled for consideration for admission in the M.B.A. course 2003-2004 conducted by the Respondent No.2.
14. Learned counsel for the Respondent No.2 argued that Pt. Ravi Shankar University has not been arrayed as party, therefore the

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Respondent No.2 cannot be directed to consider the case of the petitioner for admission to the colleges which are under the control of Pt. Ravi Shankar University. I do not find any substance in the argument for the reason that the centralize examination was conducted by the Respondent No.2 under the order of the Govt. of Chhattisgarh, Technical Education Department and that was conducted for all the four colleges and even the admission process for all the four colleges were conducted by the Respondent No.2. Therefore Pt. Ravi Shankar University is not a necessary party and the Respondent No.2 has to consider the case of the petitioner for admission.

15. As far as the argument of learned Deputy Advocate General is concerned, since the petitioner possess the minimum qualification prescribed for the M.B.A. course vide Annexure R-2/3, therefore the judgment cited by the Respondent No.1 is of no help.
16. In the result the petition of the petitioner is allowed and the Respondent No.2 is directed to consider the case of the petitioner for admission to the M.B.A. course 2003-04.

Sd/-
L.C.BHADOO
Judge